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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/046,838      | 01/15/2002  | Wah Hing Cheung      | MAC-002             | 5095             |

7590  
David P. Gordon, Esq.  
65 Woods End Road  
Stamford, CT 06905

07/14/2004

EXAMINER

CHIANG, JACK

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2642

DATE MAILED: 07/14/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/046838

Applicant(s)

C. Wah

Examiner

J. Chiang

Group Art Unit

2642

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 1-15-02.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-32 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-32 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_ ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other \_\_\_\_\_

Office Action Summary

**RESTRICTION**

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-7, drawn to the combination of speaker/mike, cable/connector and a tube, classified in class 379, subclass 430.

II. Claims 8-31, drawn to an earphone and a tube, classified in class 379, subclass 420.04.

2. The inventions are distinct, each from the other because:

3. Inventions Group I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions involve the cable/connector and the tube in Group I, and Group II does not require the cable and connector operation.

4. Each of the Groups I and II contains claims directed to the following patentably distinct species of the claimed invention:

**Group I, claims 1-7, contains the following species:**

Specie 1, claims 2-5, various materials for the tube;

Specie 2, claims 6-7, a structure of the tube.

**Group II, claims 8-32, contains the following species:**

Specie 1, claims 9-12, various materials for the tube;

Specie 2, claims 13-14, a structure of the tube;

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Specie 3, claims 15-18, 26-27, 31, an enclosure and the speaker;

Specie 4, claims 15, 23-25, 32, an enclosure and the microphone;

Specie 5, claims 15, 19-21, an enclosure and the structure of the sound passage;

Specie 6, claims 15, 28, an enclosure and the storage of the tube;

Specie 7, claims 15, 29, an enclosure and the fastener;

Specie 8, claims 15, 30, an enclosure and the earplug structure.

(**NOTE:** applicant is advised to elect **one group** from Groups I and II, and further elect **one specie** from the elected group for examination purpose).

5. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no generic claim.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. A telephone call was made to Mr. David P. Gordon on 06-10-04 to request an oral election to the above restriction requirement, Mr. Gordon has asked for a written restriction.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 703-305-4728. The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

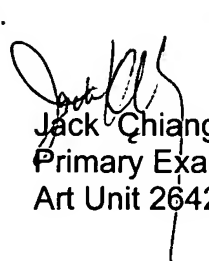
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 703-305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic  
Business Center (EBC) at 866-217-9197 (toll-free).



Jack Chiang  
Primary Examiner  
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